



November 9, 2000

Mr. Tim Curry
Criminal District Attorney
County of Tarrant
1025 South Jennings, Suite 300
Fort Worth, Texas 76104

OR2000-4367

Dear Mr. Curry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141128.

The Tarrant County Hospital District (the "district"), which you represent, received a request for "[a]ll the budgetary information prepared and ready to be presented at the JPS Board of Managers meeting last Thursday, August 24, including any information related to possible reductions or changes in patient services, or other possible deficit-reduction measures." You have made "almost all" of the requested information available to the requestor; however, you claim that one document is excepted from disclosure under section 552.106 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.106(a) protects drafts and working papers involved in the preparation of proposed legislation. The purpose of the exception is similar to that of section 552.111: to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body and to thereby protect the internal "deliberative" or policy making processes of a governmental body. Open Records Decision No. 460 (1987). Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. Section 552.106 applies only to drafts and working papers prepared by persons with some official responsibility to prepare them for the legislative body. *Id.* You state that section 281.048 of the Health and Safety Code gives the hospital district board the ability to adopt rules governing the operation of the hospital or hospital system. You state that a body that has the lawful authority to create rules and regulations is a legislative body by definition. Further, you state that *Hooten v. Enriquez*, 863 S.W. 2d 522 (Tex.App.-El Paso 1993) establishes that when a local governmental entity creates its budget it performs a legislative

function. We note that *Hotten* dealt with a county commissioner's court and not with a state agency. We do not find *Hotten* germane to the application of Section 552.106 of the Government Code to the information here at issue. After reviewing your assertions, we find that you have not sufficiently demonstrated that a hospital district is a legislative body as contemplated by section 552.106 of the Public Information Act. Accordingly, we conclude that the district may not withhold the submitted information under section 552.106 of the Government Code and must release the submitted document to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

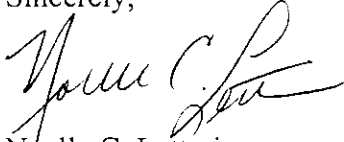
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noelle C. Letteri', written over the printed name.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/sg

Ref: ID# 141128

Encl. Submitted documents

cc: Ms. Charlotte Huff
Fort Worth Star-Telegram
P.O. Box 1870
Fort Worth, Texas 76101
(w/o enclosures)